Supreme Court, U. S.
FILED
DEC 1 1977
MICHAEL RODAK, JR., CLERK

in the Supreme Court of the United States

NO. 77-776

FORTE TOWERS, INC., JOHN FORTE, AND NATHAN GUMENICK, d/b/a SOUTHGATE TOWERS,
Petitioners,

vs.

CITY OF MIAMI BEACH,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

ANDREW C. HALL
STORACE, HALL AND HAUSER, P.A.
Attorneys for Petitioners
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(305) 374-5030

in the
United States
Supreme Court

FORTE TOWERS, INC., JOHN FORTE,
AND NATHAN GUMENICK, d/b/a
SOUTHGATE TOWERS,

Petitioners,

vs.

CITY OF MIAMI BEACH,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

TO
THE SUPREME COURT OF THE UNITED STATES

Petitioners, FORTE TOWERS, INC., JOHN FORTE and NATHAN GUMENICK, d/b/a SOUTHGATE TOWERS, present this, their Petition for a Writ of Certiorari to the Supreme Court of the State of Florida, and respectfully submit that:

1. Petitioners seek to have reviewed a decision of the Supreme Court of Florida, bearing date the 27th day of May, 1977, and has not been recorded, and that

Court's denial of Petitioners Motion for Rehearing dated September 2, 1977; said decision denying issuance of a Writ of Certiorari to the Third District Court of Appeal of Florida to review that Court's decision denying the Petitioners request for the issuance of a Writ of Certiorari to the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida, dated September 16, 1976, and recorded in official book 68, page 160, and denying the Petitioners request for Rehearing, that order dated November 1, 1976, and filed in official Records Book 69 at page 96. Copies of the aforesaid decisions are attached hereto as Exhibit "A."

2. This Petition is presented pursuant to 28 U.S.C. §1257 (3) and Rules 19 and 22 of the Supreme Court Rules.

3. The question presented for review is whether §§13-02 (02) of the Metropolitan Dade County Fire Prevention Code is violations of the Constitution of the United States by virtue of its denial to the Petitioners of their rights to due process of law and equal protection under the laws pursuant to Amendments V and IV of the United States Constitution. The text of these Amendments is set forth in Exhibit "B."

4. On April 8, 1975, the City of Miami Beach charged Petitioners with violating §14-73 of the Metropolitan Dade County Fire Prevention Code by failing to provide a manual fire alarm system.

On April 23, 1975, trial commenced in the Circuit Court for the Eleventh Judicial Circuit, in and for Dade County, Florida.

At the commencement of the hearing, counsel for Petitioners attempted to demonstrate that the ordinance as applied was unconstitutional in that it was arbitrarily and capriciously applied. Specifically, the State of Florida promulgated the Florida Building Codes Act of 1974. F. S. Section , Laws 1974, Ch. 74-167, Sections 1-18. Under that Act, a 15-member State of Florida Board of Building Codes and Standards within the Department of Community Affairs was established and was required to promulgate rules and regulations for fire prevention which would supersede any Municipal Ordinance on the subject. The standards were to be in effect not later than January 1, 1977. The Trial Court refused to consider this attack.

At the trial, the City's witness, Joseph Flood, Fire Inspector, City of Miami Beach, testified that he visited each of the buildings in question and determined that there was no manual fire alarm system as required by his office. However, Mr. Walterman, also representing the Fire Department of the City of Miami Beach, testified that he was personally aware of the standards which were to be promulgated pursuant to the Florida Building Codes Act and they would be more stringent than those applicable under the current ordinance. The evidence thus reflected that to install manual fire alarms, which would be obsolete within eighteen (18) months, would cost $50,000.00.

The evidence further reflected that the City has reached an agreement where this case would not be filed until another case involving Morton Towers had been disposed of in Circuit Court. That case was disposed of by striking the ordinance in question. Consequently, under that argument, this case should not have been brought.

The Trial Court rejecting the proposition that the ordinance was unconstitutional as applied, that there had been a plea bargain, in essence, between City and the Petitioners, entered a judgment of guilty and sentenced each Defendant to a fine of Five Hundred Dollars ($500.00) plus Fifty Dollars ($50.00) Court costs, suspending Two Hundred Fifty Dollars ($250.00) of the Five Hundred Dollar ($500.00) fine.

5. The constitutionality of the ordinance in question was first raised at the trial of this cause and were further raised by means of assignments of error and in the Petitioners two prior Petitions for Writ of Certiorari. Copies of these documents are attached hereto as Exhibit "C."

6. This Petition should be granted in that Dade County, in exercising its authority in enacting the complained of ordinance has arbitrarily and capriciously subjected the Petitioners herein to great economic loss and injury in order to comply with the ordinance. The decisions of the lower Courts herein are clearly not in accord with applicable decisions of this Court. Moreover, the questions involved are applicable throughout the country as to the limitations necessarily curtailing the police power of the various states and the subsidiary governmental units.

7. A copy of the Final Judgment entered by the Circuit Court of the Eleventh Judicial Circuit, in and for Dade County, Florida is attached hereto as Exhibit "D."

I HEREBY CERTIFY that three copies of the above and foregoing was hand-delivered this _____ day of _____, 1977, to: JOSEPH A. WANICK, City Attorney, Attorney for Respondent, 1130 Washington Avenue, Miami Beach, FL 33139.

STORACE, HALL AND
HAUSER, P.A.
Attorneys for Petitioners
Suite 200, Forte Plaza
1401 Brickell Avenue
Miami, FL 33131
(305) 374-5030

By _____
WILLIAM S. BISCHOFF

Appendix

EXHIBIT A

SUPREME COURT OF FLORIDA

FRIDAY, MAY 27, 1977

CASE NO. 50,591

DISTRICT COURT OF APPEAL,
THIRD DISTRICT
76-399

FORTE TOWERS, INC., et al.,
Petitioners,

vs.

CITY OF MIAMI BEACH,
Respondent.

This cause having heretofore been submitted to the Court on Petition for Writ of Certiorari, jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Florida Appellate Rule 4.5 c (6), and it appearing to the Court that it is without jurisdiction, it is ordered that the Petition for Writ of Certiorari be and the same is hereby denied.

OVERTON, C.J., ENGLAND, SUNDBERG, HATCHETT and KARL, JJ., concur

A True Copy

TEST:

Sid J. White
Clerk Supreme Court.

By: /s/ Tanya Carroll
Deputy Clerk

TC
cc: Hon. William P. Carter, Clerk
Hon. Richard P. Brinker, Clerk
(with copy for Judge)

Andrew Leinoff, Esquire
Andrew H. Moriber, Esquire
William A. Herin, Esquire

IN THE SUPREME COURT
OF FLORIDA

FRIDAY, SEPTEMBER 2, 1977

CASE NO. 50,591

District Court of Appeal,
Third District
76-399

FORTE TOWERS, INC., et al.,
Petitioners,

vs.

CITY OF MIAMI BEACH,
Respondent.

On consideration of the petition for rehearing filed by attorney for petitioner.

IT IS ORDERED by the Court that said petition be and the same is hereby denied.

A True Copy

TEST:

/s/ Sid J. White
Sid J. White
Clerk, Supreme Court

TC
cc: Hon. Louis Spallone, Clerk
Hon. Richard P. Brinker, Clerk
(with copy for Judge)

Andrew Leinoff, Esquire
Andrew H. Moriber, Esquire
William A. Herin, Esquire

IN THE DISTRICT COURT
OF APPEAL OF FLORIDA

THIRD DISTRICT

JULY TERM, A.D. 1976

THURSDAY, SEPTEMBER 16, 1976

CASE NO. 76-399

Circuit No. 75-16194
75-16198

FORTE TOWERS, INC., JOHN FORTE,
and NATHAN GUMENICK, d/b/a
SOUTHGATE TOWERS,
Petitioners,

vs.

CITY OF MIAMI BEACH,
Respondent.

This cause having heretofore been submitted to the Court on petition for writ of certiorari upon the transcript of record and briefs to review the order of the Circuit Court for Dade County, and the record having been considered, it is ordered that said petition be and the same is hereby denied.

A True Copy

ATTEST:

WILLIAM P. CARTER

Clerk District Court of
Appeal, Third District

By [signature illegible]
Chief Deputy Clerk

cc: Storace, Hall & Hauser
Joseph Wanick
Richard P. Brinker
William A. Herin

/plc

IN THE DISTRICT COURT
OF APPEAL OF FLORIDA

THIRD DISTRICT

JULY TERM, A.D. 1976

MONDAY, NOVEMBER 1, 1976

CASE NO. 76-399

FORTE TOWERS, INC., JOHN FORTE,
and NATHAN GUMENICK, d/b/a
SOUTHGATE TOWERS,
Petitioners,

vs.

CITY OF MIAMI BEACH,
Respondent.

Counsel for appellants having filed in this cause petition for rehearing, and same having been considered by the court which determined the cause, it is ordered that said petition be and it is hereby denied.

A True Copy

ATTEST:

WILLIAM P. CARTER

Clerk District Court of
Appeal, Third District

By [signature illegible]
Chief Deputy Clerk

cc: Storace, Hall & Hauser
Joseph Wanick

/plc

(THE FINAL ORDER IN THE ABOVE STYLED CAUSE HAS TODAY BEEN ISSUED AND MAILED TO THE CLERK OF THE CIRCUIT COURT IN AND FOR DADE COUNTY, FLORIDA)

EXHIBIT B

Amendment 5 of the United States Constitution provides in pertinent part:

> "No person shall be . . . deprived of life, liberty, or property, without due process of law (.)"

Amendment 14 §1 of the United States Constitution provides in pertinent part:

> ". . . nor shall any state deprive any person of life, liberty, or property, without due process of law; . . ."

EXHIBIT C

IN THE MUNICIPAL COURT
IN AND FOR THE CITY OF
MIAMI BEACH, DADE COUNTY, FLORIDA

CASE NO: 164517
164601

FORTE TOWERS, et al.,

Appellants,

-vs-

CITY OF MIAMI BEACH,

Appellee.

NATHAN GUMENICK, d/b/a
SOUTHGATE TOWERS,

Appellant,

-vs-

CITY OF MIAMI BEACH,

Appellee.

ASSIGNMENTS OF ERROR

FORTE TOWERS, INC., JOHN FORTE, and NATHAN GUMENICK d/b/a SOUTHGATE TOWERS, Defendants, by and through their undersigned counsel, files the following Assignments of Error:

1. The trial court erred by refusing to consider the question of whether or not the ordinances, which were

the subject of the charges in question, were unconstitutional as applied in that they were being applied in an arbitrary and capricious fashion.

2. That the City of Miami Beach arbitrarily and capriciously commenced prosecution in order to thwart appellants' rights to appeal on Case No. 163503.

I HEREBY CERTIFY that a true and correct copy of the foregoing Assignments of Error was mailed to JOSEPH WANICK, ESQ., City Attorney for the City of Miami Beach, 1130 Washington Avenue, Miami Beach, Florida, this 29th day of October, 1975.

STORACE, HALL
AND HAUSER
Suite 602, Forte Plaza
1401 Brickell Avenue
Miami, Florida 33131

By /s/ ANDREW C. HALL
ANDREW C. HALL
Attorneys for Appellants

EXHIBIT D

IN THE MUNICIPAL COURT
IN AND FOR THE CITY OF
MIAMI BEACH, DADE COUNTY, FLORIDA

CASE NO: 164517
164601

CITY OF MIAMI BEACH,
Plaintiff

vs.

FORTE TOWERS, et al.,
Defendants.

CITY OF MIAMI BEACH,
Plaintiff

vs.

NATHAN GUMENICK, d/b/a
SOUTHGATE TOWERS,
Defendants.

FINAL JUDGMENT

THIS CAUSE came on before the Court on the Plea Bargain of the Defendants in the above styled case. The Plea Bargain was that the Defendants would enter pleas of nolo contendere preserving for appeal the proposition that the Ordinance is unconstitutional as applied and further that this prosecution cannot lawfully be brought in light of a now pending appeal on the same subject matter.

The Court finds that the Plea Bargain is acceptable and accordingly, it is;

ORDERED AND ADJUDGED that the Defendants are hereby adjudicated guilty based on the plea of nolo contendere. Further this Court expressly permits and reserves unto the Defendants their right to appeal on the grounds stated herein. This Court sentences each of the defendants to pay a fine in the sum of Two Hundred and Fifty Dollars ($250.00), together with court costs in the sum of Fifty Dollars ($50.00), but until the appeals are affirmed, if they are affirmed, said fines and costs shall be treated as supersedeas bonds in the sum of Three Hundred Dollars ($300.00) for each defendant and shall be received by the Clerk of this Court as a supersedeas bond.

DONE AND ORDERED this 7 day of October, 1975, in Miami Beach, Dade County, Florida.

[signature illegible]
JUDGE SWEET

I HAROLD RICH, Clerk of the Municipal Court of the City of Miami Beach, Florida, do hereby certify that the above and foregoing is a true and correct copy of the original on file in this office.

WITNESS my hand and official seal of said City this 15th day of May, 1975.

HAROLD RICH
Clerk of the Municipal Court of the City of Miami Beach, Florida

By John M. Harris
Deputy Clerk of the Municipal Court of the City of Miami Beach, Florida

BEST COPY AVAILABLE